

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILLIAM POLOWNIAK,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,

Defendant.

Civil No. 11-cv-582 JAH (BLM)

**ORDER GRANTING
DEFENDANT'S UNOPPOSED
MOTION TO DISMISS
[Doc. No. 5]**

Plaintiff originally filed a complaint in the Small Claims Court of California, San Diego, seeking monetary relief for damage to a packaged juicer machine, naming the United States Postal Service as defendant. See Doc. No. 1. Defendant removed the action to federal court on March 23, 2011. See id. On May 5, 2011, Defendant filed the pending motion to dismiss. Plaintiff did not file an opposition or otherwise respond to the motion. The matter was set for hearing on July 29, 2011, but was taken under submission without oral argument.

Defendant's unopposed motion to dismiss seeks dismissal of the action for lack of subject matter jurisdiction and argues the United States is immune from suits arising from the negligent handling of postal service mail. The Federal Tort Claims Act ("FTCA") is the exclusive remedy for proceedings seeking damages against the United States. See 28 U.S.C. § 2679. The FTCA is a limited waiver of the federal government's sovereign immunity. See Cadwalder v. United States, 45 F.3d 297, 300 (9th Cir. 1995); Jerves v. United States, 966 F.2d 517, 518 (9th Cir. 1992). The United States retains sovereign

1 immunity for tort claims against it for "loss, miscarriage or negligent transmission" of the
2 mails. See 28 U.S.C. § 2680(b); see also Anderson v. United States Postal Serv., 761 F.2d
3 527 (9th Cir. 1985). Accordingly, Plaintiff's complaint for damage to a package shipped
4 through the United States mail, is barred.

5 Accordingly, IT IS HEREBY ORDERED:

6 1. Defendant's unopposed motion to dismiss is **GRANTED**;

7 2. The action is **DISMISSED with prejudice**;

8 DATED: August 11, 2011

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10 JOHN A. HOUSTON
11 United States District Judge
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